

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.1100 of 2009

JUDGMENT:

1 This appeal is filed under Section 173 of M.V. Act challenging the award and judgment dated 02.12.2008 passed in M.V.O.P.No.407 of 2008 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-District & Sessions Judge West Godavari at Eluru wherein and whereby an amount of Rs.3,94,440/- was awarded as compensation as against the claim of Rs.5.00 lakhs, the second respondent – APSRTC filed the present appeal.

2 For the sake of convenience, parties to this appeal will hereinafter be referred as they are arrayed before the Tribunal.

3 The facts leading to filing of the present appeal, briefly, are as follows:

4 On 22.01.2008 at about 2.00 p.m, one Simhachalam boarded the APSRTC bus bearing No.AP 11 Z 2292 at Ernagudem to go to his native place. When the bus reached Poleramma temple of Ananthapalli village, the driver of the bus had driven the bus in a rash and negligent manner due to which Simhachalam lost balance and fell down from the bus. In connection with the said accident, the Station House Officer, Ananthapalli police station registered a case against the driver of the bus in Cr.No.14 of 2008 under Section 304-A IPC. Due to the accident Simhachalam (hereinafter referred to as 'the deceased') sustained grievous injuries and died on the spot. By the date of accident, the deceased was aged 38 years and used to earn Rs.4,000/- p.m. as carpenter. The petitioners are dependants on the income of the deceased. Hence the petitioners filed the petition seeking compensation of Rs.5.00 lakhs. First respondent is the driver of the bus bearing No.AP 11 Z 2292. Therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay the compensation to the petitioners.

5 First respondent filed memo adopting the written statement filed by the second respondent. Second respondent filed written statement denying the material averments made in the petition, inter *alia* contending that the accident occurred due to the negligence of the deceased himself who suddenly entered into the running bus without the knowledge of the driver and conductor of the

bus. The first respondent is not in a position to anticipate such an unexpected event and the accident occurred without the intervention of the first respondent. There was no negligence on the part of the driver of the bus. The amount of compensation claimed by the petitioner under various heads is excessive and exorbitant. Hence the petition may be dismissed.

6 Basing on the above pleadings, the Tribunal framed the following issues for trial:

- i. Whether the accident occurred due to rash and negligent driving of the APSRTC bus bearing No.AP 11 Z 2292 driven by its driver, 1st respondent?
- ii. Whether the petitioners are entitled for compensation? If so, what amount, against which of the respondents?
- iii. To what relief?

7 During the course of trial, on behalf of the petitioners P.Ws.1 and 2 were examined and Exs.A.1 to A.8 were marked. On behalf of the respondents R.W.1 was examined but no document was marked.

8 On appreciation of the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the bus bearing No.AP 11 Z 2292 which resulted in the death of the deceased and allowed the petition in part by awarding compensation of Rs.3,94,440/- with interest at 7.5% p.a from the date of filing of the petition till the date of realisation and directed the respondent Nos.1 and 2 to deposit the same jointly and severally. Feeling aggrieved by the said judgment and award of the Tribunal, the second respondent APSRTC preferred the present appeal.

9 Heard Sri S.V.Ramana, the learned counsel for the second respondent and Sri S.Surendra Kumar, the learned counsel for the petitioners.

10 The contention of the learned counsel for the second respondent is three fold:

- i. The Tribunal discarded the oral testimony of R.W.1 on flimsy grounds.
- ii. The Tribunal failed to consider that the deceased himself fell down from the bus while boarding the running bus; and
- iii. The amount of compensation claimed by the petitioners is highly excessive

and exorbitant.

11 *Per contra*, the learned counsel for the petitioners submitted that the Tribunal has rightly considered the oral and documentary evidence available on record and arrived at a just conclusion that the accident occurred due to the rash and negligent driving of the driver of the bus i.e. R.W.1. He further submitted that the Tribunal awarded just and reasonable compensation.

12 Now the points that fall for consideration in this appeal are:

1. "Whether the Tribunal is justified in holding that the accident occurred due to the rash and negligent driving of the driver of the bus only or whether there was any negligence on the part of the deceased also to cause the accident?
2. Whether the Tribunal has awarded just and reasonable compensation."

Point No.1:

13 To prove the manner of accident and factum of death, the first petitioner herself examined as P.W.1 and got marked Exs.A.1 to A.5. P.W.2 is an eye witness to the accident. To demolish the case of the petitioners, the driver of the bus examined himself as R.W.1.

14 The oral testimony of P.W.1 is no way helpful to prove the manner of accident as she is not an eye witness to the accident. P.W.2 and R.W.1 are the eyewitnesses to the accident. As per the testimony of P.W.2, on the date of accident, the deceased was travelling in the bus along with him and when the bus reached near Poleramma temple, Ananthapalli, the driver of the bus had driven the same in a rash and negligent manner due to which the deceased fell down from the bus and died.

15 As per the testimony of R.W.1, the deceased suddenly entered into the running bus and fell down. If the testimony of P.W.2 is taken into consideration, the accident occurred due to the negligence on the part of R.W.1. If the testimony of R.W.1 is taken into consideration, the accident occurred due to the negligence on the part of the deceased. When compared to R.W.1, P.W.2 is an independent witness. The material available on record clinchingly establishes that by the time of accident, 75 persons were travelling in the bus. The fact remains that there was no door for locking of the bus in order to avoid

unforeseen incident. It is the duty of the driver and conductor of the bus to take necessary precautions in order to avoid accidents. R.W.1 who is the driver of the bus as well as the conductor of the bus, knowing fully well the conditions of the bus, permitted 75 passengers to travel in the bus. In such circumstances, the possibility of the deceased travelling in the bus by standing on the foot board of the bus is more probable as contended by the learned standing counsel for the Corporation. It is the duty of R.W.1 to drive the bus slowly more particularly at slopes and curves in the best interest of the Corporation as well as the passengers. The respondents have taken a plea that the deceased boarded the running bus without the knowledge of the driver. The accident occurred near Ananthapalli village limits. It is not possible for any body to board into the bus when the running bus more particularly in between two villages. In order to avoid payment of compensation to the victims, taking of this type of plea by the respondent – Corporation cannot be ruled out completely. The oral testimony of P.W.1, P.W.2 coupled with Exs.A.1 and A.4 clearly reveals that the police investigated into the matter and filed charge sheet. If really the accident had occurred as stated by R.W.1, what prevented him to report the matter to the nearest police immediately after the accident? The inaction on the part of R.W.1 creates any amount of doubt with regard to the version put forth by the respondents. In the cross-examination of P.W.2, nothing is elicited to shake his testimony so far as negligence on the part of R.W.1 is concerned. The testimony of P.W.2 is cogent, convincing and inspires the confidence of the court. In order to get acquittal in the criminal case registered against him, possibility of distortion of facts by R.W.1 cannot be ruled out completely. The oral testimony of R.W.1 is no way helpful to substantiate the stand taken by the respondents. The Tribunal has assigned cogent and valid reasons to its findings. I am fully agreeing with the findings recorded by the Tribunal on issue No.1. Having regard to the facts and circumstances of the case, I am of the considered view that the accident occurred due to the rash and negligent driving of the bus bearing No.AP 11 Z 2292 by R.W.1 which resulted in the death of the deceased. The point is answered accordingly.

Point No.2:

16 By the date of death, the deceased was aged 38 years. The Tribunal has taken multiplier 14.85. Basing on the material available on record, the Tribunal

arrived at a conclusion that the deceased may earn Rs.3,000/- p.m. Even by attending cooli work, one may get not less than Rs.3,000/- p.m in villages. Therefore, the Tribunal has rightly taken the income of the deceased as Rs.3,000/- and deducted 1/3rd towards his personal expenses and thus awarded Rs.3,55,440/- towards loss of dependency. The Tribunal also awarded an amount of Rs.15,000/- towards consortium, Rs.20,000/- towards love and affection, Rs.2,000/- towards transportation charges and Rs.2,000/- towards funeral charges. Having regard to the facts and circumstances of the case, the compensation awarded by the Tribunal under different heads is just and reasonable.

17 In the light of the foregoing discussion, I am unable to accede to the contention of the learned counsel for the respondents that the amount of compensation awarded by the Tribunal under different heads is on higher side. There are no grounds much less valid grounds to interfere with the well considered judgment and award passed by the Tribunal. The appeal lacks merits and bonafides.

18 Accordingly, the appeal is dismissed. No order as to costs. Consequently, miscellaneous petition if any pending in this miscellaneous appeal shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 31st March, 2015.

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